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# HOUSE BILL No. 1590

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 30-2-13-12.5.

**Synopsis:** Escrow accounts for funeral and burial services. Allows cash in an escrow account (that holds consideration paid for prepaid funeral or burial services or merchandise) to be invested in securities.

**Effective:** July 1, 2007.

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January 23, 2007, read first time and referred to Committee on Interstate and International Cooperation.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1590

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A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 30-2-13-12.5 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12.5. (a) This section  
3       applies to the following contracts entered into or established under this  
4       chapter after June 30, 1999:

- 5           (1) Contracts for prepaid services.  
6           (2) Contracts for prepaid merchandise.  
7           (3) Trusts or escrows established to hold consideration paid for  
8           services or merchandise subject to a contract entered into under  
9           this chapter.

10       (b) A contract between a purchaser and a seller must:

- 11           (1) specify that the consideration for the contract is:  
12               (A) cash, payable either in lump sum or installments; or  
13               (B) an insurance policy that is:  
14                   (i) newly issued in conjunction with and integral to the  
15                   contract;  
16                   (ii) issued previously in a transaction separate and distinct  
17                   from the contract; or

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(iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

(2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

(3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;

(4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

(A) The contract must be made in a form that is:

(i) written in clear and understandable language; and

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- 1 (ii) printed in a size and style of type that is easy to read.  
 2 (B) The contract must describe the services, merchandise, or  
 3 cash advance items being purchased.  
 4 (C) The contract must identify the following by name, address,  
 5 and telephone number:  
 6 (i) The seller.  
 7 (ii) The purchaser.  
 8 (iii) The contract beneficiary if the beneficiary is an  
 9 individual other than the purchaser.  
 10 (D) The contract must contain the seller's certificate of  
 11 authority number and the date of the contract.  
 12 (E) The contract must provide that if an item of the particular  
 13 services or merchandise specified in the contract is  
 14 unavailable at the time of delivery, the seller shall deliver  
 15 services or merchandise similar in style, quality, and of equal  
 16 value to the unavailable item in the place of the item.  
 17 (F) The contract must disclose the precise manner in which the  
 18 contract is to be funded by:  
 19 (i) identifying the consideration for the contract;  
 20 (ii) identifying the name, number, if known, and issuer of  
 21 any insurance policy used to fund the contract; and  
 22 (iii) including the identity and location of the trustee or  
 23 escrow agent who is to hold the trust or escrow.  
 24 (G) The contract must disclose that the seller reserves the right  
 25 to assess an extra charge for:  
 26 (i) transportation costs;  
 27 (ii) services or merchandise incurred in the transport of  
 28 human remains a distance greater than twenty-five (25)  
 29 miles from the seller's place of business; and  
 30 (iii) service charges necessarily incident to the transport of  
 31 human remains and in excess of those service charges  
 32 specified in the contract.  
 33 (H) The contract must disclose the following:  
 34 (i) The amount, if any, the seller has elected to receive under  
 35 subsection (c)(1) or subsection (d)(6).  
 36 (ii) That a commission or fee may be paid to the seller or the  
 37 seller's agent on a contract funded under ~~subsection~~  
 38 ~~(b)(1)(B)(i):~~ **subdivision (1)(B)(i).**  
 39 (10) specify that a purchaser has the unrestricted right to  
 40 designate one (1) or more successor sellers to whom the contract  
 41 may be transferred under section 13 of this chapter, but that such  
 42 a transfer is effective only with the consent of the newly

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designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require either of the following:

(A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.

(B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.

(2) Designate the seller as the beneficiary of the trust.

(3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of

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1 this chapter.

2 (4) Require that a separate account be maintained in the name of  
3 each purchaser.

4 (5) Require that any interest, dividend, or accumulation in the  
5 account be reinvested and added to the principal.

6 (6) Permit the assets of the several, separate accounts to be  
7 commingled for investment purposes.

8 (7) Require that on receipt of the seller's proof of delivery of  
9 services or merchandise the trustee shall remit to the seller the  
10 full amount in trust applicable to the purchaser's contract and all  
11 of the accumulated interest.

12 (8) Permit the seller to retain the remaining amount if the amount  
13 in the trust account is greater than the seller's total current retail  
14 price of all services and merchandise subject to the contract at the  
15 time of delivery of all services or merchandise subject to the  
16 contract. However, in the case of a contract funded under  
17 subsection (b)(1)(B)(ii), the seller may not retain the remaining  
18 amount but must pay the remaining amount to the entity or  
19 individual designated by the insured as the beneficiary of the  
20 death benefit proceeds not later than sixty (60) days after the  
21 receipt and deposit of the proceeds by the seller. The seller may  
22 not qualify as a beneficiary of the remaining amount or the  
23 insurance death benefit. In the case of all other contracts funded  
24 under this chapter, the seller may opt to return the remaining  
25 amount to the individual designated by the purchaser to receive  
26 the remainder or to the purchaser's estate.

27 (d) An escrow account authorized and established under this chapter  
28 must do all of the following:

29 (1) Be irrevocable and require that the seller deposit all cash or  
30 the insurance policy used to fund the contract into the escrow  
31 account.

32 (2) Designate the seller as the recipient of the escrow funds.

33 (3) Designate an escrow agent qualified under this chapter to act  
34 as escrow agent and authorize the escrow agent to assess the  
35 charges authorized under section 18 of this chapter.

36 (4) Require that the escrow account be maintained in the name of  
37 the seller and serve as a depository for all cash or insurance  
38 policies used to fund contracts sold by the seller.

39 (5) Permit the investment of and commingling of cash for  
40 investment purposes.

41 (6) Permit the seller to receive an administrative or service fee at  
42 the option of the seller. The seller may opt to receive the fee after

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the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.

(7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:

(A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus

(B) the amount, if any, received by the seller under subdivision (6).

(8) Permit the seller to receive monthly payments of the interest **and dividends** earned and the appreciation in the value of the escrow assets to the extent that the total value of the escrow after a payment authorized under this subdivision is not less than:

(A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus

(B) the amounts, if any, received by the seller under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following circumstances:

(1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.

(2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.

(3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.

(4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for

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1 services or merchandise necessarily incident to the transport of  
 2 the human remains.

3 (5) The seller agrees to conditionally guarantee the delivery of  
 4 cash advance items under subsection (b)(11)(B).

5 In the instance of unguaranteed delivery, the seller may reduce the  
 6 value or number of the services or merchandise subject to the contract  
 7 or cash advance items delivered or deliver the services or merchandise  
 8 in full on the condition that the seller receives adequate consideration  
 9 to compensate the seller for the unguaranteed part of the contract.

10 (g) The entire value of an escrow or trust established under this  
 11 chapter may not be considered as a resource in determining a person's  
 12 eligibility for Medicaid under IC 12-15-2-17.

13 (h) This chapter does not prohibit a purchaser from immediately  
 14 making the trust or escrow required under this chapter irrevocable and  
 15 assigning ownership of an insurance policy used to fund a contract to  
 16 obtain favorable consideration for Medicaid, Supplemental Security  
 17 Income, or another public assistance program under federal or state  
 18 law.

19 (i) A seller may not accept or deposit into a trust or escrow account  
 20 cash, an insurance policy, or any other property as consideration for  
 21 services or merchandise to be provided in the future except in  
 22 conjunction with a contract authorized by this chapter.

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